Legitimate legal authority and the obligation to obey

*An analysis of Joseph Raz´s arguments on legitimate authority*

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Two central questions in literature discussing legal authority seems to be the question of what the law supposedly has when it has authority and under what conditions the law can be said to have authority? This thesis analyses an answer to these two questions as it has been developed by legal philosopher Joseph Raz. The analysis is conducted through scrutinizing the coherence within and between three central concepts in Raz’s theory on legal authority; authority as normative power, the service conception and the obligation to obey. As for the concept of normative power, Raz seems to alternate between defining normative power the ability to change a protected reason for action and being a protected reason for action. The question the thesis aims to answer is whether normative power is best understood as being a protected reason for action or as the ability to change protected reasons for action. Raz does not seem to make a distinction between the two definitions, but rather suggest that they are both possible definitions of authority. However, the analysis suggests that while it seems to be the case that authority can be had both through being a protected reason for action and having the ability to change such reasons, the two concepts are not interchangeable, but represent different levels or types of authority. The analysis of the second concept, the service conception, examines Raz’s statement that justified exclusionary reasons entail a moral obligation to obey the law for the subject. Here the thesis asks if a moral obligation to obey is a plausible consequence of Raz’s theory on justified exclusionary reasons (the service conception), given Raz’s own definition of obedience? The analysis suggests that an obligation to obey is not a plausible consequence of justified exclusionary reasons. Lastly the thesis asks about the coherence between Raz’s two statements A. that justified exclusionary reasons entail a moral obligation to obey and B. that there exists no such obligation. This last question had to be somewhat revised, as the answer to the previous research question rendered the first statement (A) incoherent. As such, this last question asks how the law can have legitimate authority when it’s legitimacy is tied to an obligation to obey, which Raz’s seems to deny? The analysis suggests that these two statements are incoherent and that, as such, it is implausible that the law has the possibility to have legitimate authority if legitimate authority is based on an obligation to obey, which then is denied. The thesis ends in a summary of the results and outlines some concluding reflections which have arisen throughout the process of writing the thesis.

Keywords; authority, reasons, obligation to obey, Joseph Raz, philosophy of Law, compliance, the service conception.
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1. INTRODUCTION

Purpose and research questions
Two central questions in literature discussing legal authority seems to be the questions of what the law supposedly has when it has authority and under what conditions the law can be said to have authority? This thesis seeks to analyse an answer to these two questions as it has been developed by legal philosopher Joseph Raz. Raz’s answer to both these questions are related to his term "exclusionary reasons", which are a certain category of reasons that are, by now, distinctive for Raz’s work on legal authority. Developing and interpreting the meaning of exclusionary reasons will be part of the work of this thesis and, as such, the specifics of exclusionary reasons will be more dealt with in each chapter. However, the main controversy of exclusionary reasons is that they are assumed to be reasons which work on a higher level than any other reasons do and that as such, they are assumed to affect the subject’s actions in a way which is different from other reasons. The reason for choosing Raz’s theory on legal authority as my area of focus is a hypothesis that there seems, to me, to be concepts within Raz’s theory which are perhaps inconsistent with each other, and that these inconsistencies relate to the making of exclusionary reasons as a decisive definition of authority. The purpose of the thesis is to explore this hypothesis.

I have chosen to articulate the hypothesis that there might be inconsistency between some of Raz’s concepts as two sets of research questions. The research questions read as follows:

Firstly; according to Raz, to have authority is to have normative power over other people. However, Raz seems to define normative power over other people both as the ability to change protected reasons for action and as being a protected reason for action, while not making explicit their relation or difference.

**Research question 1:1** Is it possible to determine, through interpreting Raz’s use of these two definitions in his argumentation, which of being a protected reason for action or changing a protected reason for action that would be more plausible as his definition of authority as normative power?

**Research question 1:2** If it is possible to determine, does such an interpretation suggest any consequences for Raz’s theory on legal authority?

Secondly; Raz seems to argue that the law has legitimate authority only when its exclusionary reasons are justified. Furthermore he argues that it is only to the extent that these reasons are justified that there exists a moral obligation to obey the law.

**Research question 2:1** Is a moral obligation to obey a plausible consequence of exclusionary reasons being justified, given how Raz’s defines obedience?
**Research question 2:2** Raz also argues that there is no moral obligation to obey the law. Is it plausible that there exists both a moral obligation to obey the law based on justified exclusionary reasons and no moral obligation to obey the law?

**Research question 2:3** If one or both of the above mentioned relations are not coherent, does this suggest any consequences for Raz’s theory and/or for his disagreement with Wolff, both of which he has based on justified exclusionary reasons as entailing a moral obligation to obey?

**Method**

As my method for investigating into these research questions I have chosen an analytical approach, which is less about applying a second theory on legal authority as a tool for interpretation (such as for instance a natural law- or another positivist perspective), and more about analysing the internal coherence of Raz’s theory. This because the purpose of the thesis is to analyse the coherence of a number of selected concepts within Raz’s theory, rather than the theory’s compatibility with other legal-philosophical perspectives.

The method used for this more internal analysis departs from two methodological approaches suggested within Carl-Henric Grenholm’s book *Understanding religion: methods for theological research.* These two methods are a hypothetical deductive method (hypodeduktiv metod) and a method for analyzing arguments (argumentationsanalys). While the title of Grenholm’s book begs the question of why methods for theological research are a suitable choice for a thesis which is dedicated to an examination of a philosophical theory on legal authority, both the methods chosen are suggested by Grenholm as suitable methods for other fields of research as well. The method can thus be viewed as a hypothetical deductive inspired analysis of the relations within and between the three concepts authority as normative power, the service conception and the obligation to obey.

The combination of the two methods here means that the method for analysing the arguments which accompanies Raz’s hypotheses, is through hypothetical deduction. The choice of combining these two methods also seems to have support in Grenholms book as he seems to suggest that the procedure for analyzing arguments can be through the use of hypothetical deduction. In short, a hypothetical deductive method strives to clarify the relation between the different parts of a theory through asking about the truth of its hypotheses or assumptions. The idea is that if the hypothesis is true, so are the consequences of it. The schema for this suggested by Grenholm is that if a hypothesis $H$ is true then so is the consequence of $H$, Grenholm calls the consequence $p$. As such, if $p$ turns out to not be true, then neither is $H$. If the consequences of the hypothesis and the hypo-thesis

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1. Author’s translation, original title is *Att förstå religion: Metoder för teologisk forskning*. Since the book is in Swedish, the paragraphs discussing Grenholm’s method are entirely translated into English by the author.
itself do not match or contradict each other, Grenholm suggests that there perhaps is reason to either revise or disregard the theory.\footnote{Grenholm, 2006, p. 129-137.}

The application of a hypothetical deductive method as a method for analyzing arguments thus means that the hypotheses and its consequences, which are the objects of scrutiny in the hypothetical deduction, are accompanied by an analysis of the arguments being used in favor of and/or against a hypothesis. The aim of an analysis of arguments is to conclude whether an argument is true/plausible (true if it is an informative argument, plausible if it is a value judgment or practical argument). This is done through scrutinizing if the argument seems to be relevant to- and supportive of the hypothesis in question. An argument is thus true or plausible if it leads to or supports the hypothesis. As such, the argument needs to be logically consistent with the hypothesis.\footnote{Grenholm, 2006, p. 280-286.}

As Raz argues that authority is a practical concept, the language of “truth”, as is suggested by Grenholm as the language of informative arguments and of hypothetical deduction, is exchanged for “plausible”, which is suggested in Grenholm’s theory as the language for an analysis of practical arguments.\footnote{For Raz argument that authority is a practical concept rather than a theoretical, see Joseph Raz, 1978, “Legitimate Authority” in The authority of law, Oxford university press, 2009, p. 10}

\textit{Application of method on the research questions}

Returning to the research questions in the light of the chosen methodological approach, it is thus possible to develop the specifics of these questions further. As for the first set of research questions, these concern the coherence in Raz’s answer to the question of what the law has when it has authority. To apply Grenholms language; Raz’s \textit{hypothesis} seems to be that to have authority over other people is equal to having normative power over them. My hypothesis is that it seems unclear which definition of normative power Raz’s argues in favor of; normative power as being a protected reason for action or normative power as the ability to change such reasons? The purpose is thus to analyse Raz’s arguments, in order to scrutinize how he uses these two definitions in his argumentation. Based on his use of these definitions, the purpose is to try to answer which of them seems more plausible as definition of legitimate authority understood as normative power.

The second set of research questions scrutinizes Raz’s answer to the question of under what conditions the law supposedly has authority. The concepts being scrutinized here are the two concepts put together in Raz’s argument that the law has legitimate authority “[o]nly if and to the extent that their claim is justified and they are owed a duty of obedience.”\footnote{Raz, 1985, p. 5.} Translating the language into that of the method, Raz’s \textit{hypothesis}, it seems to me, is thus that when the legal claim to authority is justified (which is the same as when its exclusionary reason is justified), the consequence is that the subj-
ect has a moral obligation to obey the law. My hypothesis is that perhaps an obligation to obey is not a plausible consequence of justified exclusionary reasons, given Raz’s definition of obedience. As my way of examining if this is a plausible consequence I am thus scrutinizing both Raz’s definition of obedience, his concept of justified exclusionary reasons and the arguments he uses to tie these together.

The question of coherence in this research question differs from the first in two ways. Firstly, Raz’s justified exclusionary reasons is part of his normative theory the service conception. As such, while the previous research questions "merely” asks about the two definitions normative power as being a protected reason for action and normative power as the ability to change such reasons, and which of them seems more coherent, this second research question asks about the coherence between Raz’s normative theory on the one hand and his definition of obedience on the other. Secondly, as will be clear after the investigation of the first set of research questions, the definition of obedience is part of Raz´s answer to the question of what the law has when it has legitimate authority over other people. As such, this research question can also be viewed as asking about the coherence between Raz´s answer to the question of what the law has when it has authority and his answer to the question of under what conditions the law supposedly has when having authority.

Furthermore, within this second set of research questions, I also posed the question of how to unite Raz´s statement that justified exclusionary reasons have the consequence that subjects have a moral obligation to obey with his argument that there exists no such moral obligation? While the previous question separated justified exclusionary reasons from an obligation to obey and asked about the internal coherence of the statement that justified exclusionary reasons entail a moral obligation to obey, this last research question keeps the statement intact and asks about its coherence, as a whole, in relation to another hypothesis; namely that there exists no such obligation to obey. My hypothesis is that it is perhaps not plausible both that justified exclusionary reasons entail a moral obligation to obey at the same time that there seems to exist no such obligation. As my way of examining if this is plausible I am scrutinizing Raz’s hypothesis that there is no moral obligation to obey the law and the arguments he uses to make this hypothesis coherent with the view that justified exclusionary reasons do in fact impose such an obligation. As such, this last research question asks about the coherence between two normative concepts; the moral obligation to obey as a consequence of justified exclusionary reasons on the one hand and the hypothesis that there exists no such moral obligation.

Added to both these sets of research question is also the question of what consequences, if any, my analysis or interpretation seems to have for Raz’s theory. Does the theory seem plausible or does the method chosen for the analysis suggest that there is need for revision, in part or in whole? Are there parts of the theory which ought to be discarded rather than revised?
Demarcations in the use of method

There is one major demarcation and one structural difference in the use of these two methodological approaches. The demarcation is that, according to Grenholm, there are three criteria from which the plausibility of a theory is to be judged, and an additional four criteria for judging the plausibility of a moral judgment when analyzing arguments. This thesis only examines the plausibility of Raz theory from one of the criteria; the criterion of coherence (koherenskriteriet), which states that (two) statements within the same theory are not allowed to logically contradict and if they do, both cannot be plausible. As such, this thesis does not aim comment on any of the two other criteria for a plausible theory; the criterion of experience (erfarenhetskriteriet) or the criterion of science (vetenskapskriteriet). The reason why the criterion of experience is not incorporated is because it seems to me, that this criterion would relate more to Raz’s concept of a de facto authority, which is not I incorporated into this thesis, due to do-ability. Rather, my focus is on Raz’s theory on legitimate authority. The criterion from science is excluded because it seems to be a criterion used for theories which are related to religion. As this is not an analysis of a theory on religion, the criterion seems misplaced. Nor does this thesis aim to comment on any of the four additional criteria for a plausible moral judgment. These are excluded because this thesis is focused on the internal coherence of Raz’s theory. As such, the thesis is not concerned with, for instance, the plausibility of the moral judgment that there is an (or no moral) obligation to obey the law in relation to other moral views on the subject.

The structural difference is that Grenholms method on how to analyze arguments suggests that the arguments are set up in a pro- and contra list. This thesis does not use such a list to display the arguments, but rather clearly states in the text which the arguments are pro-and contra the hypothesis in question.

Material

When it comes to legal authority, Raz has not written any book on the topic, but several articles and essays stretching over several decades (in this thesis, from year 1978 to 2009). A first thing to note is that I have only chosen texts by Raz which specifically discuss authority as their main topic. As such, literature discussing concepts related to authority, but not their specific relation to authority, has not been included as material for this thesis. Raz has, for instance, written extensively, both books and other publications, on the field reasons and normativity. The reason why such material is not included even though it perhaps would have made a difference for my interpretation of Raz’s theory on legal authority has to do with do-ability. As the thesis has a limited time-frame it has been necessary to put a demarcation as to how much literature can be incorporated.

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9 This is further commented on under the heading "Demarcations".
When it comes to choosing essays and articles, the first research question relies heavily on the text *Legitimate authority*, written in year 1978, as this text discusses normative power, both as being a protected reason for action and/or the ability to change protected reasons for action. As for the second set of research questions, the main material consists of three articles. Two of these discuss and develop the justification of exclusionary reasons; *Authority and Justification*, written in year 1985, and *The problem of authority: Revisiting the service conception*, written in year 2006. As such, these two articles together comprises both an article where Raz presents his theory on justified exclusionary reasons, and an article in which revisits his theory two decades later. The third article *The obligation to obey: Revision and tradition*, from 1984, entails the hypothesis that there no moral obligation to obey. In addition to these four main articles, I have also used several other articles written by Raz, to support my interpretation of his arguments by showing that they recur elsewhere and not only in these four articles.

While the choice of incorporating other articles as support for my interpretation of Raz’s theory has the positive effect of strengthening the view being accounted for, a flip-side, which remains unseen unless articulated, is that these other articles usually introduce an additional set of concepts. While these other concepts are related to the ones analysed in this thesis, there is unfortunately no possibility to account for them all, due to a limited time-frame. This also means that any contradictions found within the articles which are being used for support will be left unexamined, unless they directly seem to oppose any of the interpretations of the concepts analysed in this thesis.

Furthermore, the choice to focus on a limited number of relations between concepts also has the consequence that, at times, relations between concepts might seem quite straightforward. On the one hand, I view this as a positive consequence deriving from a strictly limited number of concepts being scrutinized. On the other hand, some relations, it could be argued, seems too straightforward since, seen from a bigger perspective, the concepts scrutinized are also interwoven with several other concepts which, as I said, are excluded from this thesis, since more relations and concepts would have made the project too big. Thus think it should be kept in mind that Raz’s theory is complex and made up by many concepts, and this thesis aims to analyse some of them. Entering Raz’s theory from another set of relations might thus have given another set of answers.

Two last challenges before leaving the material. Firstly; Raz does not necessarily (though sometimes) relate back to his previous texts and arguments and nor does he always use the same words while appearing to write about the same subject. As such, a significant part of my work has consisted in interpreting the relation between the texts and trying to find out which concepts that seem to be translatable and which do not. Secondly there has been a challenge involved in the choice of focusing on legal authority specifically as Raz, while not arguing that all authorities are the same, frequently alternate between political, parental, governmental, legal and other expression of autho-
rity within his theory. As such, another part of my work has consisted in suggesting an interpretation of the examples as to what they perhaps would mean for legal authority specifically.

**Previous research**

When it comes to previous research material, I have sought to find secondary material that already has analyzed the specific concepts and their relation in a similar way that this thesis intends to do. One critic I have found and used is Richard E. Flathman and his book *The practice of political authority*. As the title of the book states, it is not a book on legal authority specifically. However, Flathman also discusses Raz’s theory at times and Raz himself also refers to Flathman’s book.

As can also be seen, in the last one of my research questions, I have drawn upon Raz’s disagreement with Robert Paul Wolff. In a strict sense, Wolff is not previous research, as his text is not an analysis of Raz’s theory. Rather it is the other way around; part of Raz’s work is an analysis of Wolff. When it comes to my use of Wolff, it is only the first chapter of his text *In Defense of anarchism*, written in year 1970, which will be referred to, as this is the chapter which Raz criticizes.

An important thing to note with both Flathman and Wolff is that neither of them will be target for any analysis. Rather, they are both used as tools for analysing Raz’s theory. Furthermore, both Flathman and Wolff are mainly used in the second set of research questions.

Lastly, I have no claim to having gone through all previous research and as such, there might be someone who has already done significant work on this field of study, who remains unaccredited for here. I also regret not having found any secondary sources that are not male, western academic. I believe this is also due to my time frame and the inability to do a full research on previous material.

**Demarcations**

Most demarcations have already been mentioned throughout this introduction. Firstly, I have chosen to keep the number of philosophers and texts down in order to be able to go in depth into the four main articles. Secondly, I have also chosen to keep the number of concepts and relations between concepts down. The reason for both of these demarcations is the limited time frame. A drawback with these demarcations is, as I have mentioned earlier, that Raz’s theory is more complex than this thesis portrays it to be and that as such, this analysis is better viewed as one possible starting point into which more concepts could be added for a more conclusive analysis. Thirdly, there have been some demarcations mentioned in relation to the choice of methodological approach, where the most notable one is that only one aspect of plausibility is being scrutinized, namely the one of coherence.

One aspect, which has not yet been mentioned, is that all the concepts which are being analyzed in this thesis belong to Raz’s theory of *legitimate* authority. I will develop on this distinction further in the next chapter, but shortly, this means that the thesis is not concerned with Raz’s concept of *de
facto authority or the relation between legitimate- and de facto authority.

Lastly, I would argue that the choice of not actively adding another external perspective on Raz’s theory (I exemplified with for instance a natural law perspective or another positivist perspective earlier) is a demarcation. Thus, there is both an internal demarcation which excludes other relations between concepts within Raz’s theory from the thesis, not because they are irrelevant, but because of do-ability, and an external demarcation that excludes critique from other legal-philosophical perspectives in favor of an analysis based on internal coherence. I would not, however, argue that the lack of non-male or non-western theorists as secondary literature is an active demarcation, but rather a failure from my part to find other critics of the specific relations between concepts chosen for this thesis.

Disposition
The thesis is divided into two chapters, one for each set of research questions. Both chapters follow the same structure. Each begins with an introduction to a number of relevant distinctions between concepts, in order to create an initial understanding of the language Raz uses in his theory. The introduction to the first chapter is slightly more “basic” than the introduction to the second chapter, as the introduction to the second chapter elaborate on some of the concepts introduced in the first. After these introductions there follows an overview of Raz’s hypotheses, arguments and some examples which he uses. Lastly there is an analysis tied to each chapter, so that each set of research questions is analyzed separately. The thesis ends with a concluding chapter which summarizes the thesis and raises some concluding reflections.
Some initial distinctions and relations

This short introduction aims to give an account of two aspects of Raz’s concept of authority, which have already figured in the previous chapter and are part of Raz’s definition of legitimate authority. The first of these two aspects is that the law claims authority “over other people”. The point here is that Raz distinguishes between authority over other people and authority to perform an action;

"A person has authority to perform an action if he has been given permission to perform it or has been given power to perform it by someone who has power to do so. Thus, I have authority to open your mail if the censor has given me permission to do so, assuming that he has power to do so. My authority to open your mail is not authority over you. I cannot change your normative situation in any way though the censor changed it by giving me the authority to open your mail [...]”

Thus, authority over other people involves having normative power over the person in question, while authority to perform an action does not, but is dependent on a third person having the authority to give permission for the action. The law may have authority to perform actions as well, but it is the specific quality of claiming and having authority over other people which Raz is concerned with when discussing legal authority. Furthermore, when discussing legal authority, the "other people" in question are the subjects over whom the law claims authority. While Raz uses "authority over other people" as his expression, I will from here on change the wording "other people" into explicitly saying "the subjects of law", or use a phrase similar to this. The only difference between them is that the rephrasing makes explicit which "other people" are in question when discussing legal authority specifically.

Secondly, Raz argues that the law claims legitimate authority. This means that the law claims that it’s say-so is a reason for doing as it says. Thus, claiming legitimate authority is equal to claiming that there exists an obligation to obey for the subjects of law, as the legal claim to legitimate authority has the same definition as the claim to an obligation to obey;

“The obligation to obey the law implies that the reason to do that which is required by law is the very fact that it is so required.”

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Thus, to claim legitimate authority is to claim that there exist an obligation to obey for the subject since both the obligation to obey and legitimate authority are defined as the subject having a reason to do as told because told to. The "legal say-so", it should also be noted, is the same as the existence of a law, since it is through legal directives (laws) which the law communicates its will or say-so. As such, "the legal say-so", "the legal directive" and "the existence of a legal rule" all refer to the same phenomenon of the law making an utterance on how to act (not not act). I have chosen to continuously use the phrase "legal say-so", as I find that it clearly mirrors the idea that it is the very say-so of the source which is the reason in question when discussing legitimate authority.

Furthermore, Raz distinguishes legitimate authority from de facto authority. A de facto authority is an authority which necessarily claims legitimate authority, but whose existence is not dependent on also having the legitimate authority it claims for itself. Rather, a de facto authority maintains its rule through other means than by having legitimate authority. The existence of a legitimate authority, however, is dependent on also having the legitimate authority one claims for oneself. As such, Raz argues that the concept of legitimate authority analytically and conceptually precedes the concept of de facto authority, since the latter involves a claim to the former, why the concept of legitimate authority need exist before the concept of de facto authority. As was stated under demarcations in the previous chapter, this thesis explores Raz’s theory on legitimate authority only.

Thus, the law claims legitimate authority over its subjects. The law has legitimate authority over its subjects if and when its say-so does constitute a legitimate reason for doing as the law says because it so says. As the claim to legitimate authority was the same as the claim to an obligation to obey for the subjects, this means that the law has legitimate authority over its subjects when there is an obligation to obey for the subjects. The two question of what the law has when it has authority and under what conditions the law can be said to have it can thus be further defined as asking what the law has when having legitimate authority over its subjects and under what conditions the law can be said to have it.

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14 Raz, 2009, p. 29.
16 A de facto authority is not always described by Raz as necessarily claiming legitimate authority, though it is usually described in this way. At times, Raz seems to argue that it is enough that a de facto authority is held by others (these others are sometimes the people over whom authority is exerted and sometimes a sufficient number of sufficiently powerful people) to have legitimate authority in order to have de facto authority. See for instance Raz, 1978 (2009), p. 9. (Here he however changes his mind the next sentence and writes that a de facto authority claims legitimate authority). Or Raz, 2009, p. 28. Since the law however, necessarily claims legitimate authority also in its de facto form, these other possible de facto authorities need not concern this thesis, since its focus is on legal authority. See for instance Raz, 2006, p. 1006.
19 From here on, only the wording "legitimate authority" will be used and should be understood as legitimate authority over the subjects of law, if not otherwise stated.
Legitimate authority as normative power

As was stated under the previous heading, Raz distinguishes between authority to perform an action and authority over other people, where the latter involves having normative power. To have normative power over other people, Raz argues, is to have the power to change what someone (the subject of law in this case) ought to do. Furthermore, Raz seems to equate what a person ought to do with what the person in question has reasons to do. As such, to have normative power is to have the power to change a person’s reasons for action. In one way, these four sentences say no more than what has already been said; To have legitimate authority (as normative power) is to have ones say-so constituting a reason for the subject to do as told because told to, i.e. to constitute a reason for obeying. What the shift in language does however, is to pinpoint more specifically what the law has when having legitimate authority, namely normative power.

Further continuing the definitions, normative power is defined by Raz as the ability to change a certain type of reason, namely protected ones. Protected reasons, in their turn, are reasons that are both a reason for action, and an exclusionary reason. A reason for action is, according to Raz, a first-order reason and can be either positive or negative, that is either a reason to do something, or a reason to refrain from doing something. An exclusionary reason is, according to Raz, a second-order reason. Second-order reasons are defined as reasons to act or not act on an already existing reason and can thus also be divided into two. On the negative side, a second-order reason is an exclusionary reason; a reason not to act on an already existing reason. On the positive side, second-order reasons are defined as reasons to act on an already existing reason. A protected reason is thus both a reason for action and a reason not to act on certain other reasons. These certain other reasons which are not to be acted on are those reasons which go against the authoritative say-so;

“A binding authoritative directive is not only a reason for behaving as it directs, but also an exclusionary reason, that is, a reason for not following (i.e., not acting for) reasons that conflict with the rule.”

According to Raz, orders are protected reasons for action. Thus, given Raz’s definition of a protected reason; when the law orders to do something, the fact that it so orders should be understood both as a reason to do as it says and a reason not to do anything which goes against what it says.

There is, however, one tension arising from defining orders as being protected reasons for action; normative power, and thus legitimate authority, was not defined by Raz as being a protected reason.

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for action, but as the ability to change such reasons. This inconsistency in altering between legitimate authority as being a protected reason for action and legitimate authority as the ability to change such reasons as the description of what the law has when having authority recurs on several places in Raz’s essay *Legitimate authority*. For instance, when he states the three ways in which it is possible to change a protected reason for action he writes:

“The first is by issuing an exclusionary instruction, that is, by using [normative] power to tell a person to Ø, the power-utterance is a reason for that person to Ø and also a second-order reason for not acting on (all or some) reasons for not Ø- ing. Exclusionary reasons are, therefore, protected reasons. The second way of exercising [normative] power is by making a power-utterance granting permission to perform an action hitherto prohibited by an exclusionary instruction. I shall call such permissions ‘canceling permissions’ for they cancel exclusionary reasons. The third form of using [normative] power is by conferring [normative] power on a person. This does not itself change a protected reason, but enables a person to change them.”

As can be seen, the first way for someone to change a protected reason fails itself. This because the first way states how issuing an exclusionary reason equals to being a protected reason for action. This first way thus says nothing on how it is possible to change such reasons. As can also be seen, Raz himself disqualifies the third way in which it is possible to change a protected reason for action as something which in itself defines how it is possible to change a protected reason. The second way however, seems to entail the possibility to change a protected reason, as it stipulates the possibility to change already existing exclusionary reasons by canceling them. The trouble is just that Raz does not seem to argue for this second description more than any of the other, but rather bundles them all together as if they all stipulated ways to change an exclusionary reason.

This inconsistency can further be seen is when Raz uses an example to illustrate his view on authority. In the example a mother and a father are described as independent authorities over their son. This means, according to Raz, that the authority of the father does not derive out of the mother’s and the other way around. In the example the son has a jacket he does not want to wear because it is ugly. That the jacket is ugly is thus a first-order reason for the son (against wearing it). The mother, however, tells the son to wear the jacket and because she has authority, this is both a reason for action for the son; wear the jacket (action) because she says so (reason), and an exclusionary reason to disregard the reason for not wearing the jacket, namely its ugliness. The father, on the other hand, has the possibility to tell the son to disregard the mother's order and in doing so he

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tells the son “[...] never to take her instructions as a reason for action.”

Thus, the mother seems to be described as an authority while not being described as having the ability to change a protected reason for action, since there is nowhere in the example where she does change an already existing protected reason. Rather her order is a protected reason for action and this seems enough for her to have authority. The father on the other hand, seems to have the possibility to cancel the mothers order, and thus to have the ability to change a protected reason. Thus, once again both definitions seem to be used as examples of authority without any distinction.

These three examples (that orders are protected reasons, the three ways in which it is possible to change a protected reason and the example of the family) on the inconsistency in altering between on the one hand legitimate authority is the ability to change protected reasons and on the other hand authority as being a protected reason for action, thus constitute the background to my first set of research questions.

Analysis of the research questions

Research Question 1:1

Is it possible to determine, through interpreting Raz’s use of the two definitions in his argumentation, which of being- or changing a protected reason for action that would be more coherent as his definition of legitimate authority as normative power?

Beginning in the example of the family, there is nothing in the example which suggests that the mother and the father are not both authorities. Rather they both are defined as such by Raz. Looking again at the example above, it was also suggested that the mother does not seem to have the ability to change a protected reason for action, while the father does. However, while the father has the ability to change the mother’s protected reason, he still seems to also be a protected reason for action, since his order is both is a reason for action for the son; do not take the mothers order as a reason for action (action) because he says so (reason), and an exclusionary reason to disregard the mother’s order. Judging from this, one interpretation could thus be that being a protected reason for action seems to be the more coherent definition of normative power since this seems to be the common denominator between the two parents and they both are described as having (independent) authority over their son. However, Raz himself writes after the example that:

“An act is the exercise of a normative power if there is sufficient reason for regarding it either as a protected reason or as canceling protected reasons [...]”

Thus, Raz seems to introduce another alternative, which would also explain why both the mother and the father can be regarded as authorities, even though it is only the father who is described as

having the ability to change a protected reason for action; namely authority could be either one of being a protected reasons and the ability to change such reasons. As such, the first interpretation perhaps seems less plausible given this information.

The question that arises however, is if this information thus settles my research question or if there are other possible way to move forwards with the investigation of the research question? If legitimate authority could be either or of the two, this seems to reinforce Raz’s argument that the parents in the example are both authorities over their son and that neither of the ways in which they have authority is less coherent than the other. However, I find it questionable whether the parents actually are independent authorities over their son, as Raz suggests. This because there seems to be significant differences between the authority of mother and that of the father. While the mother’s authority might not derive out of the father’s, her authority certainly seems dependent on the father’s authority, since the father has the ability to change her order. Thus, it seems to me like the mother, while still being an authority, is perhaps an authority of a lower order than the father, since his order trumps hers.

Looking again at my interpretation of the example, it was suggested that both the parents’ orders are protected reasons for action. If the father’s order trumps the mother’s, perhaps his ability to change her order comes from his order being a protected reason of a higher order than the mother’s. If so, the ability to change protected reasons for action seems to derive from being a protected reason for action of a higher order than the one which is changed. Thus, there may be more levels within the ordering of reasons than either a first-order reason or a second-order reason, since this interpretation suggests that both parent’s orders are second-order reasons for action, but not equal in strength. As such, while both parents might have authority, they do not have equal authority.

This way, authority could still be either one of being a protected reason for action or changing such reasons, since both parents are still interpreted as authorities over their son. However, in relation to the example, the interpretation also suggests two clarifications or additions. Firstly, the interpretation introduces more levels into the orders of reasons as there seems to be a possibility of having more or less authority than someone else over the same person. Secondly, the interpretation creates a relation between being a protected reason and the ability to change such reasons which is not entirely either/or, as the ability to change a protected reason is suggested to derive out of being a protected reason of a higher order than someone else.

Based on my interpretation of Raz’s use of the two definitions of normative power, either as being a protected reason for action or as the ability to change such reasons, I would thus suggest, as answer to my first research question, that normative power is exercised through being a protected reason for action, either with the ability to change other protected reasons or without. I argue that this is so because the quality of being a protected reason for action is shared by both parents. As such, while
the mother does not change any protected reason for action as far as the example tells, she still changes the son´s normative situation. However, to have more authority than someone else over the same person seems to involve the ability to change protected reasons.

As such, the answer to my first research question seems to be less of an either/or character than the research question suggests for two reasons. Firstly, authority, it seems, could be described both as being a protected reason for action and as the ability to change such reasons. Secondly, when authority is described as the ability to change a protected reason for action, this ability is suggested to include that the person in authority still is a protected reason for action, though of a higher order than the person whose order is being changed.

Research Question 1:2
Does the interpretation suggest any implications for Raz´s theory on legal authority?

As was commented on under material, while Raz does not argue that all authorities are the same, he at times uses examples which are not related to law in discussions which otherwise seems to concern legal authority, without commenting on how the example applies on legal authority. The example of the family is one such example. This last question thus aims to investigate if there are any consequences for Raz´s theory on legal authority arising from the analysis conducted above.

As is commonly held, the law claims not only legitimate authority, but supreme legitimate authority over the people within its jurisdiction. Looking at Raz´s language of protected reasons, perhaps supreme authority might thus be equal to being the highest order protected reason, since a claim to supreme authority involves acknowledging no authority above one self. If so, the say-so of the law needs to be a protected reason with the ability to change all other protected reasons on the matter. Looking at the suggestion made above, this was that it is not necessarily more or less coherent to define normative power as being a protected reason for action than as the ability to change such reasons. When it comes to defining legal authority however, if understood as a claim to supreme authority, the definition of legal authority would need to be a protected reason for action with the ability to change all other protected reasons on the issues which it claims to govern.

Thus, the consequence my analysis seems to have for the interpretation of Raz´s theory on what the law has when having authority is that it would not be enough to define legal normative power as being a protected reason without the ability to change other protected reasons. Rather, the most plausible definition of legal normative power is that of being a protected reason with the ability to change other protected reasons. As such, the analysis also seems to create another relation between being an protected reason for action and having the ability to change such reasons, which is not necessarily one of either/or, but rather one where the ability to change protected reasons is derivative from still being a protected reason. As such, Raz´s suggestion that normative power can be either or of the two definitions seems not to be applicable on legal legitimate authority, since this
Concluding the chapter

Thus, I conclude that I seem to have an answer to my first set of research questions. In interpreting Raz’s use of the concepts being a protected reason and the ability to change such reasons I found that while the answer to which of them seems more coherent as the definition of normative power is less of an either/or character than my research question suggests, the latter of the two seems most plausible as the definition of legal normative power. As such, Raz’s suggestion that normative power can be either or of the two seems not to be applicable on legal legitimate authority, since this rather involves both. Thus, while the either/or definition is possible in one way; it is possible to have normative power without having the ability to change a protected reason for action, it does not seem possible to have the ability to change a protected reason for action without also being a protected reason for action. Also, the analysis suggested more levels of reasons within the two categories Raz’s has developed, since both the mother and the father were protected reasons for action, while the father’s order had the ability to cancel the mother’s.

Flathman has however reached another conclusion through investigating the relation between Raz’s first- and second order reasons within an example which focuses on the subject of an authority. Since the investigation of the relation between the levels of reasons is not part of my thesis, I have not included Flathmans discussion here. However, Flathmans conclusion is that rather than more levels of reasons, there is not even the two levels Raz’s suggests, but only one. Flathmans suggestion is thus that the distinction between Raz’s levels of reasoning ought to be discarded. As such, it is possible that the conclusion reached here is a result from the choice of example to investigate and it would be interesting to compare the two results, though it cannot be done here. One hypothesis I have is also that perhaps my own conclusion does not necessarily contradict Flathmans, but could be translated into being a more or less weighty first order reason. For Flathmans discussion, see Richard E. Flathman, The practice of political authority, Chicago university press, 1980, p. 111-113.
Further distinctions and relations

Before beginning to explore the second set of research questions, I would like to elaborate on two of the initial distinctions that were made in the previous chapter, as they will occur within this part of the thesis. Firstly, it has already been stated that legitimate authority is dependent on obedience, since the requirement to have legitimate authority is for the subjects to have an obligation to obey. Now, the obligation to obey is, according to Raz, a moral obligation.\(^\text{31}\) As such, to have normative power is to have the power to affect what someone morally ought to do.

Secondly, it has also been stated that obeying is doing as told because told to. Obedience can thus be contrasted with Raz’s term compliance. Like obedience, compliance entails doing as told to, but unlike obedience, to comply is to do as told, but for another reason than being told to.\(^\text{32}\) The difference between them thus lies in which reason the subjects have for their actions. As has also been stated in the first chapter, a \textit{de facto} authority claims legitimate authority, but does not maintain its authority through having legitimate authority. Rather, a \textit{de facto} authority maintains its rule through other means. One feature of a \textit{de facto} authority is that while it claims obedience, it will settle for compliance.\(^\text{33}\) As such, it does not matter for the concept of \textit{de facto} authority for which reasons the subject does as the law directs, only that the subject does as the law directs.

Authority as justified exclusionary reasons

While the previous chapter has introduced exclusionary reasons with respect to which function and position they have according to Raz; they are second-order reasons which function as reasons against acting on an already existing reason, this second set of research questions is related more specifically to how exclusionary reasons perform their function and under what conditions a subject of authority is justified in following an exclusionary reason (an order) rather than their own reasons. As such, the term “protected reasons” will be left behind in favor of dealing more specifically with exclusionary reasons. However, looking at the last quote on page 16, Raz seems to argue that exclusionary reasons \textit{are} protected reasons. As orders also are protected reasons, I am unsure if there is even a difference between an order, an exclusionary reason and a protected reason.\(^\text{34}\) I will from here on alternate between the term "exclusionary reason" and "order".

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\(^{31}\) Raz, 2006, p. 1012.  
\(^{32}\) Raz, 1981, p. 130.  
\(^{33}\) Raz, 1985, p. 5.  
\(^{34}\) I am also unsure why the term "protected reason" is introduced, if it is the same thing as an exclusionary reason.
When it comes to how exclusionary reasons perform their function, Raz argues that exclusionary reasons exclude by kind and not by weight. Thus exclusionary reasons are different from first-order reasons heavy enough to weigh out competing reasons. When the law says to do something, the fact that it so says should not be seen as a fact to be taken into account into the deliberations on what ought to be done all things considered. Rather exclusionary reasons are to be taken as reasons which excludes competing reasons from the subject’s deliberation on what ought to be done, and replaces those other reasons with the authoritative say-so. This because;

“[T]he one who commands is not merely trying to change the balance by adding a reason for the action. He is also trying to create a situation in which the addressee will do wrong to act on the balance of reasons. He is replacing his authority for the addressee's judgment on the balance.”

As such, exclusionary reasons exclude by replacing, displacing or preempting previous reasons for action held by the subject with the authoritative judgment.

As for Raz’s answer to under what conditions subjects are morally justified in following an exclusionary reason instead of their own reasons for action, this is also the answer to under what conditions the law has authority, as Raz argues that the law has authority when its subjects are morally justified in following the legal say-so, rather than deliberate on reasons for action themselves. As such, Raz connects the possibility for law to have authority to the subject being morally justified in following the law.

Raz’s theory on the justification of exclusionary reasons is more commonly known as the service conception. In short, the service conception states that subjects are justified in following an authoritative say-so when they have sufficient reasons for following an exclusionary reason rather than following their own reasons for action. Subjects have sufficient reasons for following an exclusionary reason, according to the service conception, when the two criteria the normal justification condition and the independence condition are met. These are described in the following way;

“First, that the subject would better conform to reasons that already apply to him anyway (that is, to reasons other than the directives of the authority) if he intends to be guided by the authority than if he does not (I will refer to this as the normal justification thesis or condition). Second, that the matters regarding which the first

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condition is met are such that with respect to them it is better to conform to reason than to decide for oneself, unaided by authority (I will refer to this as the independence condition).”

I will side-step the second criterion here, since Raz himself argues that the independence condition merely restates the question which the service conception is trying to answer, rather than helps with its solution. As such, focus lies with the first condition, which states that the law has legitimate authority when the reasons a subject already has for an action will be conformed to better if the subject follows the authoritative exclusionary reason, than if the subject does not. As such, justified exclusionary reasons also have a third condition tied to them, which Raz labels as the dependence condition; for an exclusionary reason to be justified it needs to take into account all the background reasons the subject already has, so that the authoritative directive mirrors what the subject already had reasons to do and makes the subject conform better to those reasons than the subject would without following the say-so of the authority.

To put his theoretical framework into context, Raz has two examples, which more or less re-states what has just been said. One example regards traffic manners, and stipulates that where there is no legal or other authoritative directive on how to drive, we would have reason to drive as safely as we can. This reason to drive as safely as we can corresponds to our background reason. Thus, Raz argues that the purpose of traffic regulations is to enable us to drive safer by issuing directives on how to drive:

“Where the law leaves driving decisions to us, we are still guided by those background considerations. But where it intervenes to require certain ways of driving, we are bound to obey it [...] This is, roughly, what I mean when I say that legitimate laws and the directives of legitimate authority generally, preempt the background reasons that might militate against the authoritative directives and replace them with their own requirements.”

Disregarding for the moment that there are no background reasons displayed in the example that would militate against the authoritative directive to enhance safe driving, since we are all presumed to have the one background reason (and the same definition of that reason) of wanting to drive safely, and focusing instead on the structure of justified exclusionary reasons, two comments are in place. Firstly, the example highlights what was commented on in the previous chapter as well, namely that the way a subject is to follow an exclusionary reason is through obeying it. Raz almost

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41 Raz, 2006, p. 1014.
42 Raz, 2006, p. 1017.
44 Raz, 1985, p. 18.
45 Raz, 1985, p. 18-19
exclusively use the wording “follow an exclusionary reason” in the service conception. However, “following” is a broader term than obeying, which makes it easy to forget (and Raz indeed seems to have done so) that the question of when the law has legitimate authority is specifically the question of when its subjects are justified in obeying an exclusionary reason. As such, I will from here on exchange the term "following" for the term obeying, as obeying is the intended way in which a subject of authority is to follow an exclusionary reason. Secondly, the example on driving thus suggests that;

“The function of authority is to improve our conformity with those background reasons by making us try to follow [as in obeying] their instruction rather than the background reasons.”

As such and as has already been said, the law has authority when its say-so both mirrors the subjects background reasons and enhances the subjects ability to conform better to those reasons if they obey the exclusionary reason rather than act on their own reasons.

The same argument can be seen in the example of the arbitrator, who is described to have authority to settle a dispute. Since the arbitrator has authority, the two people who are using the arbitrator to settle their dispute ought, according to Raz, to do as he says. As the regulations on driving in the example above supposedly reflected the background reasons of wanting to drive safely, the arbitrator’s directive is said to be meant to sum up all the reasons in the dispute between the parties and his directive to reflect them. Thus again, and alike what has already been said;

“The arbitrator's decision is also meant to replace the reasons on which it depends. In agreeing to obey his decision they agreed to follow [obey] his judgment on the balance of reasons rather than their own.”

There is however, one aspect of Raz’s justified exclusionary reasons which deserves some extra attention. This aspect can be seen, for instance, as Raz’s criticizes H.L.A Hart, who, according to Raz, suggests that;

“'The commander characteristically intends his hearer to take the commander's will instead of his own as a guide to action and so to take it in place of any deliberation or reasoning of his own: the expression of the commander's will... is

46 Raz, 1985, p. 19.
47 Raz, 1985, p. 10
48 I am not sure why the example of the arbitrator is an example of authority over other people, since the arbitrator specifically is said to have authority to settle a dispute, which seems, to me, more like authority to perform an action. This reflection actually raises the question of to which extent the law is claiming authority over other people and to which extent it is claiming authority to perform an action. However, the question of the relation between authority to perform an action and authority over other people is unfortunately too big to investigate in this thesis, but I do believe the relation between the two perhaps is of interest in investigating to what extent the law, within a democracy, claims authority over its subject and/or claims the authority to perform the action of legislating, empowered by the subjects themselves.
intended to preclude or cut off any independent deliberation by the hearer of the merits pro and con of doing the act.”  

To me, this looks very similar to how I view Raz’s argumentation on justified exclusionary reasons as it has been accounted for. As a response to Hart’s argument however, Raz answers that what Hart is saying is implausible because;

“Surely, what counts, from the point of view of the person in authority, is not what the subject thinks but how he acts. I do all that the law requires of me if I comply.”

As has been stated, one of Raz’s main arguments is that legitimate authority demands obedience, not compliance. If I do all that the law requires of me if I comply, as Raz here suggests, there would be little need for a theory which excludes other reasons for action, since compliance is not concerned with which reasons for action a subject has.

It is possible, however, that the word “comply” is a simple confusion here, and that the reason for the mistake is a mix-up between what is necessary for legitimate authority and what is necessary for de facto authority. What is necessary for legitimate authority has by now been heavily repeated; obedience. A de facto authority, as was stated above, will however settle for compliance, even if it claims legitimacy. That the word compliance is perhaps a mistake or confusion could be argued for in two ways. Firstly, Raz’s usual stringency in distinguishing between compliance and obedience could be argued to enhance the view that the term compliance here is a mere confusion. Secondly, reading further on the pages where the argument quoted above appears, the point Raz seems to be trying to make is not related to compliance, but to the first sentence in the quote; that subjects does not need to surrender their judgment in obeying an authoritative say-so. What they need to surrender, he argues, is acting for any other reason than the one the law provides, not thinking about the merits of the different reasons.

As such, the background for my second set of research questions is in place. Shortly summarized exclusionary reasons are meant to preempt any background reasons for action that the subjects may have, and replace those reasons with the authoritative reason for action. The authoritative reason for action, as can be seen in the definition of obedience and the example of the family, is one only; namely, because I, as an authority, say so. Exclusionary reasons constitute legitimate authority only when its subjects are justified in obeying the order of an authority rather than following their own reasons. Subjects are justified in obeying (and thus exclusionary reasons are justified and the law has legitimate authority) only when obedience to an exclusionary reason makes the subjects

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49 Raz, 1985, p. 7.
50 Raz, 1985, p. 7.
51 Raz, 1985, p. 8.
52 Raz also refers this argument to Flathman, 1980, p. 90-103.
conform better to reasons they already had through obeying rather than deliberating between reasons themselves. As such, the only way to acknowledge authority as legitimate is to not act on the background reasons, but acknowledge the legitimacy of the exclusionary reason and, in doing so, to take the authoritative say-so to be a reason for action which replaces the background reasons.

Analysis of the research questions

That being said, I have now come to the analysis of my second set of research questions. The departure of these research questions was Raz’s statement that the law has legitimate authority “[...] only if and to the extent that their claim is justified and they are owed a duty of obedience.”

Research question 2:1
Is Raz’s justification of exclusionary reasons compatible with a moral obligation to obey, given his definition of obedience?

Beginning in obedience, one feature of the claim to a moral obligation to obey is that the claim is content-independent. This because obedience has one reason only, do as told because told. As such:

“It cannot be the content of these obligations, for the demand for consent is not made to depend on the content of the obligations. It depends on their source.”

Thus, it is the say-so of the source (the law in this case) which needs to be justified as a legitimate reason for action, not the content of the say-so. This because the obligation to obey is a claim to a moral obligation to do as told because told, not because or when the say-so told meet certain criteria. This is also noted by Flathman, who argues that while the subjects may examine the content of the say so as much as they wish, the act of obeying cannot be conditional on this examination, but has to be an act of doing as told because told to.

The service conception, however, seems to be content-dependent as it makes the justification of authority dependent on how well its exclusionary reasons reflect all other background reason. This because it states that the law has authority (and thus the subject has a moral obligation to obey) only when the exclusionary reasons mirror all the background reasons and as such makes the subject better conform to those background reasons. So interpreted, the service conception does not answer when a subject is justified in doing as told because told and for no other reason, but rather that a subject is justified in doing as told when doing as told this makes the subject conform better to the background reasons.

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55 Raz, 1985, p. 5.
57 Raz 2006, p. 1038.
59 Flathman, 1980, p. 103.
60 This is thus also what Raz means when he argues that the subject is allowed to think on the merits of the content of the legal say-so, but not allowed to act for another reason than being told to.
When Raz revisited his service conception in 2006, this also seems to be what he realized, as he then argued that the service conception “fell short” on accounting for authority specifically. The reason he gave was that it falls short because authority is not just a matter of being justified in not deciding for oneself, (in not doing what ought to be done on the balance of reasons and rather following a justified exclusionary reason that is) but that it involves “subjecting our will to that of another”\textsuperscript{61}. The will of another, is here to be understood as the say-so of another, since doing as told because told to answers to responding to the will of the authority, rather than the content of the say-so. The service conception however, falls short in taking into account this claim of the law, which is not that the subject owes obedience when the law can justify this to the subject, but that there is an obligation to obey whenever the law so requires, simply because it so requires. Thus, Raz’s answer to when a subject is justified in following the law does not match the claim which need to be justified, which is that the subject ought to obey the law because it so-says, not because of what it says.

Thus, the answer to my first research question seems to be that the justification of exclusionary reasons does not seem to be compatible with a moral obligation to obey, given Raz’s definition of obedience. Rather there seems to be incoherence between the two concepts, since justified exclusionary reasons do not correspond to what it means to obey, but rather distorts or changes the definition of obedience into being dependent on the content of the authoritative say-so. Furthermore, this seems to be a conclusion similar to the one Raz reached in 2006.

\textit{Research question 2:2}

\textit{Secondly, Raz also argues that there is no moral obligation to obey the law. How is it coherent to argue both for a moral obligation to obey based on justified exclusionary reasons and no obligation to obey?}

As was stated under method, the second research question within this set, intended to keep the statement that justified exclusionary reasons entail a moral obligation to obey intact and ask about its compatibility with the hypothesis that there is no moral obligation to obey. However, as this question proceeds from a statement which has just been argued to be incoherent, the question arises of what to do with this research question? The question, it could be argued, makes no sense to ask, as the previous analysis has clarified that justified exclusionary reasons does not answer to a moral obligation to obey and, as such, there is no longer a question of coherence between the non-obligation to obey and a moral obligation to obey as a result of justified exclusionary reasons. However, it would be possible to re-state the question and ask about the coherence between the hypothesis that having authority entails a moral obligation to obey for the subjects, and the fact that, according to Raz, there is no such obligation.\textsuperscript{62}

\textsuperscript{61} Raz, 2006, p. 1039.
In short, when Raz argues that there is no obligation to obey the law, this means that there is no obligation to obey the law as the law claims a right to be obeyed, which is by all subjects and at all instances that the law requires, because it so requires. Raz calls this a strong obligation to obey. As such, what is denied by Raz is that “[…] the fact that something is a law creates an obligation to obey it.” This does not mean that Raz denies that there might be moral reasons to follow some laws, but these would be reasons other than the legal say-so, or that some people have an obligation to obey some laws, or even that a legal system has a valuable function in society even without such an obligation. It simply means that there is no general obligation to obey an authoritative claim to obedience as it has been defined above. To establish such a strong obligation, Raz argues,

“[i]s to establish that its claim is justified, that the law indeed has the legitimate authority it claims to have.”

As can be seen, the quote stipulates what has already been said; that legitimate authority is had only to the extent that there is an obligation to obey in the sense stated above. However, in this context, it seems to be this very obligation which is denied. Raz argument here is thus that to establish such an obligation is to establish that the law indeed has the legitimate authority it claims for itself and it is this kind of obligation he denies. As such, Raz here seems to end up denying the possibility for a legitimate authority to exist, as he connects its existence to the obligation to obey which he denies. As such, it seems to be incoherent to argue both in favor of the possibility of legal legitimate authority based on the subjects having a moral obligation to obey, and at the same time argue that there is no such moral obligation to obey.

Research question 2:3

Lastly, If one or both of the above mentioned relations are not coherent, does this suggest any consequences for Raz’s theory and/or for his disagreement with Wolff, both which he has based on justified exclusionary reasons as entailing a moral obligation to obey?

As the previous analysis suggests then, the concept of justified exclusionary reasons and the definition of an obligation to obey does not seem to be compatible and neither does the concept of legitimate authority and the hypothesis that there is no moral obligation to obey for the subject. One chal-

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66 Raz, 1984, p. 142.
67 Raz, 1984, p. 143.
69 It could perhaps still be possible, however, that there is no incoherence in between the law claiming an obligation to obey and there existing no such obligation, and as such, that there is no incoherence between the concept of a de facto authority and no obligation to obey. Since the concept of de facto authority is excluded from this thesis, this possibility is not possible to look into here however.
lenge with Raz is that, as he argued that his service conception does not justify authority specifically, he did not refer back to what consequences this might have had for his theory, or for any of the disagreements he has had. This last research question is thus devoted to look at one of these consequences.

Beginning in Raz’s disagreement with Wolff, one of the main controversy’s between them has been that of valid exclusionary reasons. Raz’s argument is that Wolff denies that a person is ever justified in following an order rather than their own reasons for action and that as such, Wolff, according to Raz, denies the possibility of legitimate authority all together. To illustrate his view, Wolff has an example, which Raz also uses to illustrate his disagreement. The example is about a captain of a ship, who orders his crew to man the lifeboats. Wolff is part of the crew and he declares his attitude towards the captain’s order in the following way;

“If someone in my environment is issuing what are intended as commands, and if he or others expect those commands to be obeyed, that fact will be taken into account in my deliberations. I may decide that I ought to do what the person is commanding me to do, and it may even be that his issuing the command is the factor in the situation which makes it desirable for me to do so. [...] But in so far as I make such a decision, I am not obeying his command; that is, I am not acknowledging him as having authority over me.”

When referring to this passage in Wolff’s text, Raz agrees that even if an order is always given with the intention to be taken as a protected reason, the addressee has more options than to either disregard it or obey it as intended. It is possible to take the order as a valid first order reason, while denying that it is a valid exclusionary reason. This means that an anarchist, like Wolff, thus can reject the legitimacy of all authority while giving weight to de facto ones, since it is only by acknowledging a command as a justified exclusionary reason that a subject accepts the legitimacy of authority. Wolff however wrongly assumes, according to Raz;

“[t]hat there are no valid exclusionary reasons, that is, one is never justified in not doing what ought to be done on the balance of first-order reasons”.

Thus, Raz’s counter-argument to Wolff is that there could, in principle, be valid exclusionary reasons and that as such, there could in principle also be legitimate authority.

70 Raz, 1978 (2009), p. 27.
72 Raz, 2009, s. 26-27.
73 Raz, 2009, p. 27.
74 Raz, 2009,p.27.
While I agree with Raz that the fact that Wolff views a command in this way does not mean that no one might be justified in viewing it in some other way, the question, however, is how Raz´s answer is to be viewed in the light of the previous analysis? Looking at Raz´s reply to Wolff, it states that there could, in principle, be justified exclusionary reasons (and thus legitimate authority). Looking back on what Raz found in 2006 however, authority is no longer regarded as a matter of being justified in not doing what ought to be done on the balance of reasons. Thus, the argument Raz makes against Wolff is the very same argument Raz, in 2006, realizes does not count as an account for legitimate authority. That there could, in principle, be valid exclusionary reasons and that one may be justified in not doing what ought to be done on the balance of reasons is thus no longer regarded as an argument which explains legitimate authority and cannot, as such, be an argument against Wolff meant to show how there can be legitimate authority. As such, one implication of the interpretation that justified exclusionary reasons does not account for legitimate authority is that Raz´s argument against Wolff does not hold by his own terms. This does not mean that Wolff automatically is right, only that another argument has to be put forward against it. That Raz´s reply to Wolff no longer seems to hold as an argument which proves the existence of legitimate authority is probably due to an implication for Raz´s theory, which the analysis has raised; namely that Raz´s answer to under what conditions the law seems to be insufficient. This because the service conception does not seems not to correspond to the concept which it is meant to justify, namely the moral obligation to obey. As such, the arguments made against Wolff are based on a part of Raz´s theory which, according to this interpretation and partly according to himself, is judged as incoherent. Furthermore, since the answer to my second research question suggests that it is also incoherent to argue both for the possibility of a legitimate authority and no moral obligation to obey, this further strengthens the argument that Raz does not seem to prove the possibility of a legitimate authority. A further implication of this is thus also that it seems unclear what to do with the service conception and which part it plays in a discussion on authority.

Concluding the chapter
Thus I conclude that I seem to have a set of answers also to the three research questions I asked in relation to Raz´s theory on justified exclusionary reasons and the obligation to obey.

As for the first question, it asked if there is coherence between Raz´s justification of exclusionary reasons and a moral obligation to obey, given Raz´s own definition of obedience. The answer seems to be that they are not compatible. The reason why this seems to be so, I argued, is because the service conception seems to condition the authoritative say-so and thus makes legitimate authority content-dependent, whereas legitimate authority, as it is connected to obedience, is described as a content-independent claim, deriving only from the say-so of the source. Also, this conclusion seems
resemble what Raz himself found as he revisited his service conception in 2006. As such, I concluded that the argument that the subject has a moral obligation to obey when exclusionary reasons are justified seems to be incoherent as the justification of exclusionary reasons does not answer to the consequence of the subject having a moral obligation to obey.

The second research question asked about the coherence between, on the one hand, justified exclusionary reasons as entailing a moral obligation to obey and, on the other hand and the fact that Raz argues that there is no such obligation to obey. This research question had to be somewhat modified as the question proceeds from a statement which had just been argued to be incoherent. As such, I changed the question into asking how the definition of authority as entailing an obligation to obey for the subject is coherent with the argument that there exists no such obligation. The puzzle which arose here was that Raz seems to argue that establishing a moral obligation to obey is tied to establishing that the law has the legitimate authority it claims for itself and, as such; if there is no way to establish this obligation to obey, this seems to suggest that there is no way to establish a scenario when the law has the legitimate authority it claims for itself neither, since these two are tied together. Thus, I argued that it seems incoherent to argue both for the non-existence of a moral obligation to obey for the subject and the possibility of a legitimate authority. However, I also concluded that it could still be possible that there is no incoherence in between the law claiming an obligation to obey and there existing no such obligation. What this suggests, however, seems to be that there perhaps is no incoherence between a de facto authority and no obligation to obey. This hypothesis could however not be investigated as the scope of the thesis is limited to Raz’s concept of legitimate authority only.

Lastly, the third research question asked if the findings of the previous research questions had any implications, both for Raz’s disagreement with Wolff and for Raz’s theory as a whole? Here I chose to raise one implication for Raz’s theory, which is that his answer to under what conditions the law has legitimate authority, given the analysis of the previous research questions, seems insufficient. This because Raz seems to have has built his answer to the question of under what conditions the law has authority on justified exclusionary reasons, which, according to Raz himself, fall short on accounting for authority. Thus, there does not seem to be a sufficient answer to under what conditions the law has legitimate authority in Raz’s theory. Furthermore, this seems to have implications for Raz’s disagreement with Wolff, as Raz has chosen to build his disagreement on the exact same argument which is accounted for as “falling short” in 2006. This seems to mean, I argued, that Raz’s disagreement with Wolff is based on an argument which he himself no longer holds as an argument which proves when the law has legitimate authority and as such, while this does not automatically give Wolff right, the analysis suggests that another argument would need to be presented in order to try to prove Wolff wrong.
Summarizing the thesis

This thesis has sought to analyse the answers to the questions of what the law has when it has authority and under what conditions the law can be said to have authority, as they have been developed by legal philosopher Joseph Raz. The analysis has proceeded from two sets of research questions, one which was related to Raz’s answer to the question what the law has when it has authority and the other which was related Raz’s answer to under what conditions the law has authority. Each field has had two respectively three research questions tied to them. The analysis sought, mainly, to analyse the coherence in between a selected number of concepts within in Raz’s theory on legitimate authority. Which concepts that were analysed in relation to each other were articulated in the research questions. The analysis of coherence mainly drew upon a hypo-deductive method, as a way of analyzing the arguments which Raz’s uses to motivate his hypotheses with.

As for the first set of research questions, I found that my answer did not conform to the either/or way in which I had posed the question. This because legal authority seems to involve both being a protected reason and the ability to change such reasons. While it was possible to break down Raz’s arguments to determine which of his arguments that conformed to the description of authority as being a protected reason and which of the arguments that conformed to the description of authority as the ability to change such reasons, the answer to which of being a protected reason for action or the ability to change such reasons was the more coherent definition of legal legitimate authority, seems to be both. On a very basic level authority seems perhaps to entail “merely” being a protected reason for action without any necessary ability to change other protected reasons for action. As soon as more than one person claims authority over the same person(s) however, the ability to change protected reasons seems to become part of the definition of normative power. Furthermore I argued that the ability to change protected reasons seems to derive from being a protected reason of a higher order than someone else who also is claiming authority. As the law claims supreme legitimate authority, I argued that a definition of legal legitimate authority thus ought to be defined as being a protected reason with the ability to change other protected reasons.

One suggested consequence of this analysis was that thus, the analysis perhaps helps to clarify the claim to legal authority specifically, as it highlights both differences and relations between being a protected reason for action and the ability to change such reasons. Another implication I found was that the analysis suggests that there are more levels or orders of reason within the two categories which Raz suggests. This finding was perhaps in contrast to Flathman, who seems to argue in favor
of abolishing Raz’s levels of reasons. However, this difference was not possible to look into.

As for the second set of research questions, the first of these asked about the coherence in Raz’s statement that justified exclusionary reasons entail the consequence that the subjects have a moral obligation to obey, whereas the second question asked about the coherence between this statement and the hypothesis that, according to Raz, there is no such obligation. As an answer to the first research question, I found that the justification of exclusionary reasons does not answer to a moral obligation to obey. This because the service conception makes the authoritative say-so content-dependent whereas obedience is not based on the content of the say so, but is content-independent and based on the source of the say-so. As such, the justification of exclusionary reasons does precisely what it says; provides a justification for when the subject has reasons enough to follow an exclusionary reason instead of balancing reason for themselves, but it seems to fail to count for obedience specifically. As such, there seems to be incoherence built into the statement that the justification of exclusionary reasons explains or entails a moral obligation to obey, as the justification of exclusionary reasons does not explain the obligation to obey but rather alters or distorts the notion of obedience.

As for the second research question, this had to be somewhat revised, as the first part of the question had already been suggested to be incoherent. As such, I changed the question to ask how the definition of legitimate authority as entailing a moral obligation to obey for the subject is coherent with the hypothesis that there exists no such obligation. The puzzle which arose here was that Raz seems to argue that establishing a moral obligation to obey is tied to establishing that the law has the legitimate authority it claims for itself and, as such; if there is no way to establish this obligation to obey, this seems to suggest that there is no way to establish a scenario when the law has the legitimate authority it claims for itself neither, since these two are tied together. Thus, I argued that it seems incoherent to argue both for the non-existence of a moral obligation to obey for the subject and the possibility of legitimate authority. However, I also concluded that it could still be possible that there is no incoherence in between the law claiming an obligation to obey and there existing no such obligation. What this suggests, however, seems to be that there perhaps is no incoherence between a de facto authority and no obligation to obey.

Lastly, I asked if the findings of the previous research questions had any implications, both for Raz’s disagreement with Wolff and for Raz’s theory as a whole. Here I chose to raise one implication for Raz’s theory, which is that his answer to under what conditions the law has legitimate authority, given the analysis of the previous research questions, seems insufficient. This because Raz seems to have has built his answer to the question of under what conditions the law has authority on justified exclusionary reasons, which, according to Raz himself, fall short on accounting for authority. Thus, there does not seem to be a sufficient answer to under what conditions the law has legitimate autho-
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Concluding reflections

While the above summary thus concludes the thesis by summarizing my results, this last part of the thesis is dedicated to questions and thoughts which have arisen throughout the process of writing. Some of the reflections are closely tied to the concepts investigated in the thesis, while others raise questions which, while still related to Raz’s theory on authority, are not bound to the limitations set in the thesis.

The first reflection is closely tied to the previous chapter and concerns the possibility of having legitimate authority. As has been suggested and accounted for, Raz’s answer to the question of under what conditions the law has legitimate authority consists in the justification of exclusionary reasons. However, as both Raz himself seems to suggest in 2006 and as my interpretation suggests; justified exclusionary reasons falls short (Raz’s own words) on accounting for authority specifically. As such, it is suggested in this thesis that justified exclusionary reasons falls short as an answer to the question of under what conditions the law has legitimate authority, as the concept does not meet the criteria for authority specifically. As was also said, this interpretation also had effects on Raz’s disagreement with Wolff, as Raz criticizes Wolff for denying the possibility of someone having legitimate authority over someone else. What was shown in the analysis, however, was that Raz seems to have built his disagreement with Wolff on justified exclusionary reasons, which no longer are said to account for authority specifically. As such, I argued that Raz does not seem to succeed in answering how legitimate authority is possible. Thirdly, I also argued that Raz seems to tie the possibility of a legitimate authority to the moral obligation to obey for the subject, at the same time as he argues that no such obligation exists. As such, Raz seems to be arguing that the only way to prove an obligation to obey would be to prove that all subjects are obliged to obey the law at all instances where the law requires for the very fact that it so requires. Simultaneously, it is the existence of this very obligation he denies. As such, this also seems to deny the possibility of legitimate authority as legitimate authority was explicitly tied to this mode of obedience.

Thus, my first concluding reflection is that the possibility of a legitimate authority does not seem to be proven by Raz, and as such, the question of its existence or possibility thus seems to remain open. This openness is of course not conclusive, but rather a result of reading Wolff, who does not
acknowledge its legitimacy and Raz, who seems to fall short in proving Wolff wrong. One possible way to account for the existence of legitimate authority would thus perhaps be to incorporate other theories into the analysis or change the definitions of one or more concepts entailed in Raz’s theory.

The second reflection, or rather set of reflections, concerns the concept of de facto authority. My first reflection in relation to this concept is that the analysis in this thesis probably would benefit from lifting in the concept of de facto authority. One possibility would be to "simply" lift in the concept of de facto authority into the analysis and ask about its relation to legitimate authority. However, I am also pondering the question of legitimate de facto authority.

On the one hand, it could seem like an answer to the question of legitimate de facto authority would be that a legitimate de facto authority is simply a legitimate authority. However, as has been stated; a legitimate authority both claims legitimate authority and has legitimate authority, while a de facto authority claims legitimate authority but maintains its authority through other means. As such, the question of legitimate de facto authority would thus perhaps rather ask which “other means” would be legitimate for a de facto authority? Such an analysis would, I imagine, perhaps introduce other concepts, such as for instance punishment and power or force. One question arising is for instance, if a de facto authority only claims legitimate authority understood as normative power or if it also claims other legitimate powers, such as for instance the right to punish/sanction? This is also, I believe, what Wolff writes about as he suggests that the field of “causal ethics” be introduced as a field of study. Leaving the term aside completely, my interpretation is that he suggests that the such a concept would ask questions about for instance, punishment, war, equality and “[w]hether there are any moral principles which ought to guide the state in its lawmaking […]”? Furthermore, the concept of legitimate de facto authority would perhaps also ask under which conditions subjects have an obligation to comply to the law. One possibility here, I imagine, would be to lift in Raz’s theory on disobedience and/or respect for law, as this theoretical part introduces concepts such as “just laws” and the obligation to support- or comply with those.

Another possibility which I am pondering in relation to legitimate de facto authority is the service conception. One question that has arisen as the thesis has proceeded is namely that if the service conception falls short on accounting for under what conditions the law has legitimate authority, does this mean that it ought to be revised to fit or does it perhaps account for something else? One hypothetical answer I have is that perhaps the service conception is better tied to when a subject has reasons to comply, rather than to obedience? As such, perhaps the service conception has relevance for an answer to when the law has legitimate de facto authority? If the service conception states, not when a subject justified in doing as told because told to, but that subjects are justified in doing as told when what they are being told mirrors all their background reasons, this seems perhaps to be a

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theory on when the subjects have reasons other than the legal say-so which would justify them in following the law. (The reason would then perhaps be “because the law answers to R” rather than “because the law says so”, R being the subject’s background reasons.)

However, even if this would turn out to work, the service conception still faces at least two problems. One of these has already been stated in the thesis, namely that the service conception does not seem to take into consideration all the many varied reasons people might have for their actions. Since the service conception seems, to me, to suggest that subjects themselves are judges of which reasons are justified, since the idea is that the authoritative say-so is to mirror all the subject’s background reasons and thus justify to the subject, the act of following the legal say-so, the question which arises is thus how the service conception is to handle the many different reasons within a legal jurisdiction? As can be seen in the examples which Raz uses, they involve either maximum three persons or an unnumbered amount of persons who, in any case, are all assumed to have the same background reasons defined in the same way. Thus, the examples seem to perhaps leave out the complexity of having authority over millions of different people. The second problem is this. If the service conception is applied to compliance rather than obedience the background reasons seems no longer to be whichever reasons the subject has, but justice specifically. This because Raz seems to argue that one ought to respect just laws. As such, were the service conception to be applied on compliance, this perhaps suggests that there is already a set reason for the subject (and perhaps also a definition of that reason). One interesting question which arises out of this however would be which concept of justice were to be the concept, since the answer to of a law ought to be complied to probably will be relative to which concept of justice that is applied.

My last reflection is the question of whether such a critique on the sameness of reasons and perhaps an underlying, though not articulated, notion of justice can be articulated further through a more post-structural and deconstructive perspective? A third such assumption which could also be investigated into through such a critique, is one which is suggested by Flathman, but that has not been accounted for in this thesis. One of Flathmans critiques of Raz is namely that the service conception assumes that all subjects have the capacity to reason. Subjects simply seem to need the ability to recognize their own reasons and furthermore to compare them with the law. Thus, perhaps also the construction of rationality could be part of such a critical perspective.


Raz, Joseph, "Authority and Justification" in *Philosophy and Public Affairs* vol. 14, no. 1, 1985

